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13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15
16 SAN FRANCISCO DIVISION

17 **ALEJANDRO MADRID, et al.,**

18 Plaintiff,

19 v.

20 **JAMES TILTON, et al.,**

21 Defendants.

C 90-3094 TEH

22
23 **STIPULATION AND**
24 **[PROPOSED] ORDER RE**
25 **STATEWIDE USE OF FORCE**
26 **POLICY**

27 The parties stipulate to the implementation of the attached document (Department
28 Operations Manual Chapter 5, Article 1, Use of Force) as the statewide use-of-force policy for
the California Department of Corrections and Rehabilitation's (CDCR) Division of Adult
institutions. The parties further stipulate and request that the Court order that the attached
document be implemented to govern the Division of Adult Institution's procedures pertaining to

1 the use-of-force, as set forth in Cal. Code Regs., tit. 15, § 3268^{1/} and replace the current use-of-
2 force policy at Pelican Bay State Prison (Pelican Bay).

3 In support of this stipulation, the parties briefly report to the Court the processes that
4 resulted in the creation of the attached statewide use-of-force policy.

5 **PROCEDURAL HISTORY**

6 On July 12, 2000, this Court ceased monitoring Defendants' use-of-force policies following
7 a report and recommendation by the Special Master. In that Order the Court determined that the
8 proposed use-of-force policy revisions did not conflict with the Court's orders, adequately
9 addressed the operational problems associated with earlier remedial plans, and adequately
10 addressed any constitutional issues related to use-of-force regarding Pelican Bay State Prison's
11 use-of-force policy.

12 Counsel for CDCR forwarded to Special Master John Hagar a proposed statewide use-of-
13 force policy on December 17, 2007. On January 10, 2008, the Special Master asked the parties
14 to meet with Court Experts Michael Gennaco and Dr. Pat Maher to ensure that any statewide use-
15 of-force policy would be consistent with the current use-of-force policy at Pelican Bay, which
16 was part of the Court-Ordered remedial plan. The mission was to achieve uniformity throughout
17 the state prison system while maintaining the features of the current Pelican Bay policy that
18 adequately address constitutional issues related to use-of-force.

19 The parties and other interested stakeholders began meeting in earnest to achieve these goals
20 on January 25, 2008. That meeting was chaired by Court Experts Michael Gennaco, Stephen
21 Connolly, and Dr. Pat Maher, and attendees included counsel for the parties, representatives of
22 the CDCR, the CDCR's Office of Internal Affairs, the Governor's Office and the Office of
23 Inspector General's Bureau of Independent Review. At the first meeting, the parties identified
24 differences between the draft statewide policy and the current Pelican Bay use-of-force policies.
25 The parties assessed these differences in terms of their significance, their practical implications,

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27 1. The parties recognize that Section 52100.17.6, Health Care Staff Use of Force-Reporting
28 Requirements, contains a provision in the last paragraph that will require approval of the Receiver
and Court in the *Plata* litigation and await any further instruction regarding the appropriate
mechanism for achieving that approval process.

Stip. and [Proposed] Order re CDCR Use of Force Policy

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1 and possible approaches for their reconciliation.

2 The parties then worked extensively to achieve a mutually acceptable statewide use-of-force
3 plan. Along with considerable work by individual subcommittees and regular correspondence
4 between the parties, subsequent meetings were held on February 4 and 20, 2008. At the February
5 20, 2008 meeting, representatives from Pelican Bay attended and offered their insight and
6 comments regarding the development of the statewide policy through their specific practical
7 experiences at Pelican Bay. During both of those meetings, the parties and interested
8 stakeholders made progress toward consensus.

9 On March 3, 2008, a conference call was held among the parties and stakeholders, and all
10 remaining issues regarding the statewide use-of-force policy were resolved. The Court experts
11 then reviewed the final policy and concurred that the final statewide use-of-force policy met
12 constitutional standards. The Court experts further concluded that the statewide policy achieves
13 the goal of uniformity, while preserving Pelican Bay concepts and applying them statewide.

14 CONCLUSION

15 The working group developed a use-of-force policy for all adult institutions statewide as
16 provided in the attached document. The parties stipulate that the attached statewide use-of-force
17 policy adequately addresses constitutional issues related to use-of-force and that it shall upon
18 formal adoption and implementation by Defendants replace the *Madrid* use-of-force policy at

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1 Pelican Bay. Defendants shall file and serve a written notice of adoption and implementation of
2 the attached statewide use-of-force policy within ten (10) calendar days of the date of that action.

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4 Dated: May 12, 2008

Michael Jorgenson
Michael Jorgenson
Attorney for Defendants Tilton, Horel, and
McLean

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8 Dated: May 8, 2008

Steve Pama
Steve Pama
Attorney for Plaintiffs

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10 IT IS SO ORDERED.

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12 Dated: 05/13/08

